

Part 3: Other Allegations Relating to the Nominee

The Committee looked into a number of allegations involving the nominee unrelated to his involvement in Iran-contra or the allegations that he "politicized" intelligence. Some of these inquiries were conducted in closed session by the Committee.

The results of these inquiries are summarized below in unclassified form. Members of the Senate may review the classified materials underlying these results should they choose to do so, pursuant to the provisions of Senate Resolution 400, 94th Congress.

1. Sharing Intelligence with the Government of Iraq.

In order to forestall a total Iraqi collapse in its war with Iran, the CIA was authorized in 1984, pursuant to a National Security Decision Directive signed by President Reagan, to share limited in-

telligence with the Government of Iraq. At the time, Gates was Deputy Director for Intelligence at CIA, with overall responsibility for preparing the intelligence to be shared under this arrangement.

In April, 1986, a few weeks before Gates assumed office as Deputy Director of Central Intelligence, the National Security Council (NSC) authorized a modification of the original authority to permit CIA to share certain additional intelligence regarding the results of Iraqi military operations.

In October, 1986, a further modification of the authority was provided, authorizing the sharing of certain additional intelligence to enhance Iraq's pursuit of the war with Iran.

Intelligence sharing continued on a sporadic basis until 1988 when the war between Iraq and Iran ended.

In December, 1986, when the *Washington Post* published an article describing in detail a CIA liaison relationship with Iraq, alleging that military information was being provided to assist the war effort against Iran, the CIA was asked to brief the House Permanent Select Committee on Intelligence concerning this relationship. The first time the Senate Select Committee on Intelligence was made officially aware of the sharing arrangement, however, occurred a year later when the staff director was briefed in December, 1987. A second staff briefing occurred in April, 1988. No action was taken by the Committee at the time as a result of these briefings. In September, 1990, the Committee made its first official inquiry of CIA concerning this activity, and pursued it in closed hearings which took place in June, 1991.

At the 1991 confirmation hearings, questions were raised with the nominee in both closed and open session concerning the Iraqi relationship. Of principal concern was whether this sharing arrangement should have been reported in advance to the oversight committees as a "significant anticipated intelligence activity," pursuant to the Intelligence Oversight Act of 1980; or, when the decision was made to provide more than limited intelligence in 1986, whether the activity became a "covert action," requiring a presidential finding and reporting to the intelligence committees pursuant to the Hughes-Ryan amendment (22 U.S.C. 622) in effect at the time.

The Committee's investigation of this activity also disclosed that CIA staff officers had, on two occasions, shared certain intelligence with the Iraqis which, at the time it was provided, may have exceeded the scope of the sharing arrangement which had been authorized. This activity took place in the summer of 1986, several months prior to the authority being granted by the NSC in October, 1986.

At his confirmation hearings, Gates acknowledged that he had been aware that the CIA was providing information to Iraq during this time period, but he said "we were not trying to influence [Iraqi] behavior, but to enhance their ability to pursue the war." (Gates, 10/4/91, morning, p. 83)

Gates stated that when he became Deputy DCI in April, 1986, he "delegated management of the Iraqi liaison relationship to Mr. Kerr . . . and relied upon Mr. Kerr and the Directorate of Operations to ensure that those [NSC] guidelines were followed." As far

as he knew, Gates testified, CIA had been fully "compliant" with the NSC constraints. (Gates, 10/4/91, morning, p. 84)

Asked whether he believed the expansion of the intelligence sharing arrangement in 1986 constituted a "covert action," Gates replied:

I believed at the time that the activities were fully consistent with the understanding and practice of the Hughes-Ryan law then in effect, as it pertained to liaison relationships. (Gates, 10/4/91, morning, p. 84)

Asked whether the expansion of the arrangement in 1986 should have been reported as a "significant intelligence activity," Gates replied:

I think it was judged at the time not to fall within the rubric of significant intelligence activity that would be reportable . . . [Given] this evolving oversight relationship that we have had for the last 15 years that kind of activity would now be regarded by CIA as a significant intelligence activity and presumably would be reported to the Congress. (Gates, 10/4/91, morning, p. 85)

Whether intelligence sharing arrangements of this type should have been considered as "covert actions" was also considered during the testimony of retired Admiral Bobby Inman:

If the stated purpose of the [intelligence] exchange was purely to influence another country in its other activities, then I would have come down that it needed a Finding . . . Unfortunately, in the real world of operating day to day, I don't think you can end up that neatly, controlling whether it ends up influencing . . .

If there was a quid pro quo—that in return for the intelligence exchange the country was going to do something that we wanted them to do, then in my view that would clearly require a Finding, if that was your explicit intent when you set out. You did it because you wanted them to go do something they were not doing from which you would benefit. That's an operation. That's not simply an exchange . . . (Inman, 9/20/91, pp. 58-60)

Inman went on to testify that providing intelligence to assist a country do something that it already intended to do or to use in its ongoing activities would be the "test for me" in terms of deciding whether intelligence sharing should be treated as an "exchange" or a "covert action." (Inman, 9/20/91, pp. 66-67)

From the Committee's review of documents related to this matter, interviews with key witnesses, and from the testimony in closed session, it appears:

The United States did not enter into the Iraqi liaison relationship to induce Iraq to undertake a new policy, but rather to show Iraq how to succeed at the policy it had already adopted. Indeed, the war with Iran had been ongoing for years when the exchange relationship began. As a consequence, a majority of the Committee does not believe that this activity constituted a covert action.

The NSC authorized that the character of the information provided to Iraq change in 1986, but the purpose of the intelligence sharing arrangement (i.e., to provide information to assist Iraq in prosecuting an ongoing war) did not change.

Neither the Executive branch nor the CIA determined that the information provided to Iraq required a Presidential Finding, or notification to Congress. Both Gates and other senior CIA officials testified that given the same circumstances in today's environment where the awareness of Congressional oversight is considerably heightened, the intelligence sharing arrangement with Iraq would be reported to the oversight committees as a significant intelligence activity.

The United States, in the context of the intelligence sharing relationship, also received some useful intelligence from Iraq.

U.S. assistance was limited to providing intelligence and advice with respect to the pursuit of the war. There is no evidence to indicate that the CIA, or any other entity of the U.S. government, supplied arms or related military equipment or technology to Iraq. However, it is clear that proposals to provide such assistance were considered and rejected.

The Committee found no evidence that Gates himself took any action to keep the oversight committees from being informed about CIA's relationship with Iraq.

4. Allegations by Ari Ben Menache

In several interviews with the Committee, and in press reporting, Mr. Ben Menache alleged that Mr. Gates:

engaged in a covert CIA program involving various arms merchants, including Mr. Carlos Cardoen of Chile, to sell arms to Iraq;

conspired with the Reagan-Bush campaign in 1980 to delay the release of Americans held hostage in Iran until after the November election; and

engaged in a variety of other activities, including transporting large amounts of cash from Florida to Arizona, meeting

with an Iranian official in Kansas City, and conducting other activities associated with international arms transactions.

The Committee requested the assistance of the FBI to investigate these allegations. In addition, the Inspector General of the Central Intelligence Agency was requested to investigate certain of these matters.

At his confirmation hearing, the nominee denied specific allegations made by Mr. Ari Ben Menache.

The investigations of the FBI and CIA's Inspector General, which included analyses of Gates' calendar and travel records, also provided no credible evidence to confirm the allegations.

5. Allegations Relating to CIA's Relationship with Carlos Cardoen

In various news reporting and other forums, Mr. Richard H. Babayan alleged that the nominee:

- assisted an individual named M. K. Moss in a covert CIA operation to supply arms to Iraq;

- sought to transfer cluster bomb technology to Carlos Cardoen;

- was aware that a Lancaster, Pennsylvania company was engaged in the illegal supplying of arms to Iraq via South Africa.

In a July 16, 1991 letter to the United States Ambassador in Chile, Mr. Carlos Cardoen denied meeting the nominee, and denied allegations about working with the nominee and the CIA to deliver weapons to Iraq.

The Inspector General of the Central Intelligence Agency was asked to investigate certain of these allegations, as was the FBI. Gates' calendar and travel records were reviewed for the dates of the meetings alleged. No credible evidence has been presented to the Committee to support these allegations.

At his confirmation hearing, the nominee denied allegations of Mr. Babayan.

However, during the course of investigating alleged relationships between the nominee and Chilean arms manufacturer Carlos Cardoen, the Committee received information about a relationship between Cardoen Industries and a former part-time senior CIA employee that may have constituted a conflict of interest and security concerns at worst, or an awkward appearance at best.

Information obtained by the Committee indicates that from January 1986 to January 1988, the CIA employed James D. Theberge as a member of the Senior Review Panel.

The Senior Review Panel consists of experienced, highly regarded former intelligence, military and foreign affairs specialists. The Panel and its members often assist in establishing the terms of reference set out at the start of the preparation of intelligence estimates, as well as providing the DCI with independent assessments of finished intelligence estimates.

During much of the same period that James Theberge was a member of the Senior Review Panel, he was also employed as a consultant to SWISSCO Management Group, a subsidiary of Cardoen Industries of Chile, a widely recognized international arms manufacturing and trading company. Between 1984 and 1988, Cardoen Industries was of significant intelligence interest to CIA, which believed Cardoen was the primary supplier of cluster bombs

to the Iraqi government, and an important supplier of other categories of ordnance to Iraq and other Middle Eastern states.

The officials involved in Mr. Theberge's recruitment and selection to the Senior Review Panel included Director William Casey, Deputy Director John McMahon, and Executive Director James Taylor. There is no evidence that the nominee, Mr. Gates, participated in either his recruitment or selection. Theberge, a former diplomat and businessman with strong academic credentials, had been U.S. Ambassador to Nicaragua in the 1970's and U.S. Ambassador to Chile from 1982 to 1985. In his personal history statement, submitted to the CIA in December 1985 at the time of his hire, Theberge freely disclosed his consulting work for SWISSCO, and the fact that SWISSCO's parent company was Cardoen Industries. Notwithstanding those disclosures, Theberge was hired on a three-days-per-week basis. While he did not see every estimate of the Intelligence Community, his exposure was extensive.

Mr. Theberge served on the Senior Review Panel until his death in January 1988.

The Committee found no evidence that the CIA identified or acted upon Mr. Theberge's potential conflict of interest when he was considered for employment or during the period he served on the Senior Review Panel. Moreover, the Committee found no evidence that the CIA considered the potential benefits to Cardoen Industries that might result from access to U.S. intelligence information through Mr. Theberge.

As has been indicated, Mr. Gates was not involved in Mr. Theberge's recruitment or selection. In addition, in responses to questions for the record, Mr. Gates has stated, "I was unaware of his [Theberge's] relationships, his connection to the SWISSCO Management Group, or any connection to the Carlos Cardoen Group." Indeed, the Committee's documentary evidence makes clear that Director Casey was the CIA official most instrumental in recruiting Mr. Theberge.

At the Committee's request, Gates responded to several additional questions for the record regarding his relationship with Mr. Theberge, his role in Mr. Theberge's hiring, his knowledge of a potential conflict of interest regarding Mr. Theberge's simultaneous relationship with CIA and a Cardoen Industries subsidiary, and Mr. Theberge's duties and access to intelligence as a member of the Senior Review Panel. Gates' responses to these questions were:

When I became DDI in January 1982, I persuaded the DCI and DDCI to move the Senior Review Panel organizationally (and administratively) from the DI to the DCI area. Decisions on Senior Review Panel [SRP] members were made by the DCI, although from time to time, I would suggest names of possible candidates or the DCI would ask my reaction to someone he was considering. I do not recall meeting Ambassador Theberge prior to his joining the SRP and I am fairly confident I did not see any personnel files or forms on him. When the DCI decided he wanted to hire someone for the SRP, the regular clearance process would go forward without my involvement inas-

much as the SRP did not work for or report to either the National Intelligence Council or the DI.

I was Chairman of the National Intelligence Council for less than three months after Ambassador Theberge joined the SRP. My only contact with him would have been in meetings with the SRP as a group—although it is possible he paid a courtesy call on me.

The SRP's sole function was to review draft national estimates and offer comments *as a group* to the DCI, the Chairman/NIC and the relevant NIO. Occasionally, they were asked to do retrospective assessments of the accuracy of previous national estimates. It was standard procedure for all the members of the SRP to integrate their comments on a given estimate and all would sign the same paper. To the best of my knowledge, Ambassador Theberge did not review other Intelligence Community drafts or CIA/DI draft analyses concerning Latin America. I do not know whether he reviewed products concerning Carlos Cardoen's role in international arms trafficking. I assume he would not have unless the subject were addressed in a draft NIE and, neither I nor the Chairman of the SRP recall such an instance. (Gates' letter to the Committee, 10/24/91)

The Committee found no evidence that Mr. Theberge wittingly or unwittingly provided intelligence information to Carlos Cardoen or any other unauthorized person. However, the Committee is concerned by the CIA's willingness to hire an individual with ties to Carlos Cardoen for a highly sensitive position on the Senior Review Panel. Thus, the Committee is continuing to develop information about this matter.

6. Involvement with Bank of Commerce and Credit International

Recent news accounts had alleged that in 1986, when Gates was Deputy Director of CIA, the CIA had considerable information on BCCI's illicit activities, but did not provide this information to U.S. Customs until 1988, long after Customs had launched an investigation of BCCI. Former Customs Commissioner William Von Raab is quoted in a *Financial Times* article dated August 11, 1991, as stating:

I guess that Gates made an immediate decision back in 1988 to keep Customs in the dark. I think it was a bad decision, in terms of both the interests of our country and the judicial process. Gates could have been of considerable assistance to our investigation and his lack of information to me may have resulted in BCCI's criminal activities being strung out for a long time greater than was necessary.

In his testimony on August 1, 1991, to the Senate Foreign Relations Committee's Subcommittee on Terrorism, Narcotics and International Operations, former Customs Commissioner William Von Raab elaborated on his conversation with Gates:

When I was preparing in the final stages of the investigation to announce the BCCI case, and I wanted to get more information about BCCI, both for my own purposes as Commissioner of Customs and also to answer questions responsibly to the press, I rang up the agency. I rang up Bob Gates . . .

And I told them what we were doing and I asked him what he knew about BCCI and he quipped that it was known among his colleagues, the agency, intelligence services as the bank of crooks and criminals international . . .

He said I will send you a piece that we have done on BCCI, and shortly thereafter it came over to the Customs intelligence unit, which was typically the way agency documents would be passed over . . . It didn't prove to be particularly useful to us as an investigative tool.

At his confirmation hearing, Gates confirmed that he had spoken with Von Raab in 1988, but he explained CIA had provided information much earlier to many other agencies and had relied upon Treasury to provide it to law enforcement agencies:

CIA began collecting information on BCCI in late fall of 1984 at the request of the Treasury Department. The information that they asked for was gathered and the Treasury Department was briefed in January of 1985. Someone from the Secretary's office, and, also, I understand, the number two man in the Office of the Comptroller of the Currency . . .

There was [also] . . . a report prepared by the Directorate of Operations in September of 1986 . . . These reports were sent to a number of agencies. In both cases, they were sent to the Department of Treasury. I think one of the two was sent to the FBI. Others were sent to the State Department and other agencies of the Government . . . [I]n trying to piece this together, I think the Agency frankly has had a little difficulty in figuring out exactly to whom they should send this kind of information, and relied on Treasury to inform the appropriate law enforcement officials . . . (Gates, 9/17/91, afternoon, pp. 66-67)

Gates stated that Von Raab had called him concerning a prosecution of BCCI which he had going on in Florida, and wanted to ensure that there was no problem in terms of exposing CIA operations. Gates said he told Von Raab that there was no problem with Customs' pursuing the prosecution, and provided him a copy of the 1986 CIA report on BCCI. During the conversation Gates referred to BCCI as the "bank of crooks and criminals," an appellation he attributed to one of the CIA staff officers who had briefed him on the earlier CIA analysis immediately before the call to Von Raab. (Gates, 9/17/91, afternoon, p. 68)

Asked why, if CIA had considered BCCI a "bank of crooks and criminals," its reports on BCCI had not also been sent to the Justice Department, Gates responded:

I think the people in the Operations Directorate who disseminated these reports—first of all, the source was a new

source and they weren't quite sure how to handle it because it was particularly sensitive. They were clearly not experts on banking regulations or the law enforcement aspects of this. And I think they just made the assumption that the Treasury Department would take whatever action was necessary, especially given the degree of dialogue that there had been back and forth with Treasury. (Gates, 9/17/91, afternoon, p. 67)

Gates did concede, however, that he would see to it that the Justice Department would henceforth be informed of such cases. (Gates, 9/17/91, afternoon, p. 69)

The Committee conducted an independent review of relevant documents and witnesses at CIA but found no evidence to conclude that Gates purposely withheld, or authorized the withholding, of intelligence reports about BCCI from other U.S. government agencies. It appears that the failure of CIA to include all U.S. agencies with potential interests in BCCI in the dissemination of its earlier reports was not purposeful but rather reflected a lack of understanding of those interests.